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Premier Environmental Solutions, LLC and Teamsters Local Union No. 838, Affiliated with International Brotherhood of Teamsters. Case 14–CA–191378

July 25, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the corrected complaint. Upon a charge filed by Teamsters Local Union No. 838, affiliated with International Brotherhood of Teamsters (the Union) on January 18, 2017, the General Counsel issued a corrected complaint on April 27, 2017, against Premier Environmental Solutions, LLC (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On May 22, 2017, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on May 24, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the corrected complaint affirmatively stated that unless an answer was received by May 11, 2017, the Board may find, pursuant to a motion for default judgment, that the allegations in the corrected complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and email dated May 12, 2017, advised the Respondent that unless an answer was received by May 19, 2017, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the corrected complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with its principal office in Sterling Heights, Michigan, and has operated at customer facilities throughout the United States, including the Recycle Center at the Ford Kansas City Assembly Plant located in Kansas City, Missouri (Kansas City Ford Plant), where it has been engaged in providing environmental recycling services.

In conducting its operations during the 12-month period ending December 31, 2016, the Respondent performed services valued in excess of \$50,000 in states other than the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Duane Jones	-	President
Mario Garcia	-	Supervisor

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse equipment operators employed by the Respondent in the Recycle Center at the Ford Kansas City Assembly Plant located in Kansas City, Missouri.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement, which was effective by its terms from January 7, 2015, to January 6, 2017.

At all times since January 7, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about early November 2016, the Union has requested orally that the Respondent furnish the Union with the following information: Supervisor Mario Garcia's phone records.

Since about December 5, 2016, the Union has requested in writing that the Respondent furnish the Union with the following information: Supervisor Mario Garcia's phone records.

Since about December 27, 2016, the Union has requested in writing that the Respondent furnish the Union with the following information:

1. The complete personnel file of Anthony Cartwright for the entire term of his employment at Premier Environmental Solutions;
2. All documents, including but not limited to all audio and/or video recordings, relied upon by Premier Environmental Solutions in making its decision to terminate the employment of Anthony Cartwright;
3. All documents referring or relating to other employees of Premier Environmental Solutions who have been disciplined or discharged for the same or similar conduct for which Mr. Cartwright was terminated, for the three (3) year period preceding the date of Mr. Cartwright's termination;
4. Premier Environmental Solution's work rules, employee policies and/or employee handbooks which are applicable to bargaining unit employees, including but not limited to policies prohibiting the conduct for which Mr. Cartwright was discharged;
5. All written or recorded witness statements, notes, memoranda or other documents related to the Premier Environmental Solution's internal investigation of the alleged conduct for which Mr. Cartwright's employment was terminated;
6. The identity of the individual making the ultimate decision to terminate Mr. Cartwright's employment at Premier Environmental Solutions and the date and time that such decision was made; and
7. The identity of all individuals who provided, or offered to provide, any written or verbal statements related to the investigation conducted by Premier Environmental Solutions into the alleged conduct for which Mr. Cartwright was terminated.

The information requested by the Union, as described above, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, including grievance processing.

At all material times, the Respondent has failed and refused to furnish the Union with the above information requested by it.¹

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to provide the Union the information it requested since about early November 2016.

ORDER

The National Labor Relations Board orders that the Respondent, Premier Environmental Solutions, LLC, Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Teamsters Local Union No. 838, affiliated with International Brotherhood of Teamsters (the Union), by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union in early November 2016 and on December 5 and December 27, 2016.

(b) Within 14 days after service by the Region, post at its facility in Kansas City, Missouri (Kansas City Ford Plant), copies of the attached notice marked "Appen-

¹ Chairman Miscimarra adheres to the views he expressed in *Piedmont Gardens*, 362 NLRB No. 139 (2015), slip op. at 8-11 (Member Miscimarra, dissenting in part) regarding the duty to disclose witness statements. However, in the absence of any response from the Respondent to the complaint or the Board's Notice to Show Cause, he concurs in finding that the Respondent unlawfully failed to provide the requested information regarding witness statements.

dix.”² Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 25, 2017

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union’s performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information it requested in early November 2016 and on December 5 and December 27, 2016.

PREMIER ENVIRONMENTAL SOLUTIONS, LLC

The Board’s decision can be found at www.nlrb.gov/case/14-CA-191378 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

